State of California

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Legislative Change No. 01-31

Bill Number: SB 366 Author: Haynes Chapter Number: 01-669

Laws Affecting Franchise Tax Board: Revenue and Taxation Code Section 21015.6

Date Filed with the Secretary of the State: October 10, 2001

SUBJECT: Taxpayers' Bill of Rights/No Levy or Lien on Principal Residence of Investor

Senate Bill 366 (Haynes), as enacted on October 10, 2001, made the following changes to California law:

Section 21015.6 of the Revenue and Taxation Code is added.

This act :

- defines "abusive tax shelter" as a potentially abusive tax shelter within the meaning of the Internal Revenue Code, where a penalty has been imposed by either the Internal Revenue Service (IRS) or the Franchise Tax Board (FTB) for either 1) promoting an abusive tax shelter, or 2) aiding and abetting an understatement of tax liability.
- defines "innocent investor" as any individual or their spouse or former spouse that:
    1. is liable for underpayment of any tax under the Personal Income Tax Law for any taxable year ending prior to December 31, 2000, resulting from ownership of an interest in an abusive tax shelter;
    2. had no responsibility for the creation, promotion, operation, management, or control of the abusive tax shelter; and
    3. reasonably believed that the individual's tax treatment of an item attributable to an abusive tax shelter was, more likely than not, the proper treatment of that item.
- defines "principal residence" to include any property that qualifies as a declared homestead under current state law;
- provides that notification of an individual's innocent investor status must be made in the manner FTB prescribes;
- prevents FTB from seizing and selling (levying) a personal residence of an innocent investor if the residence is owned by the investor and the levy is a result of an underpayment of income tax for any taxable year ending prior to December 31, 2000, which is due to an abusive tax shelter;
- requires FTB to release any state tax lien on the principal residence of an innocent investor, in which:
    1. the investor owns the principal residence, and
    2. the basis of the lien is an underpayment of tax for any taxable year ending prior to December 31, 2000, which is due to an abusive tax shelter.

Bureau Director	Date
Brian Putler	October 11, 2001

- requires FTB to release state tax liens that meet the above criteria and survive after an innocent investor is discharged from personal liability for the unpaid state tax debt in bankruptcy proceedings;
- requires FTB to return any proceeds from the sale of a principal residence that were received in satisfaction of a state tax lien or as a result of a levy upon written notification from the innocent investor;
- requires any amounts returned to the innocent investor to include interest;
- clarifies that any amount returned must first be credited against any other liability due;
- requires the notification and substantiation of the innocent investor status to occur within one year of the date the proceeds are received by FTB;
- allows the owner to consider a request for the return of proceeds to be denied if FTB fails to mail a notice of denial within six months from the date of the request; and
- allows the owner of the principal residence to bring an action against FTB within one year from the date the proceeds are received by FTB or 90 days after FTB denies the request for the return of the proceeds, whichever period expires later.

This act is effective on January 1, 2002, but specifies that it is operative for levies and liens for taxable years ending on or before December 31, 2000.

This act will not require any reports by the department to the Legislature.